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No. 111 Original

In The

Supreme Court of the United States

OCTOBER TERM, 1988

STATE OF DELAWARE,
Plaintiff,

STATE OF TEXAS,
Intervenor,

DISTRICT OF COLUMBIA,
Applicant for Intervention,

v.

STATE OF NEW YORK,
Defendant

MOTION BY THE DISTRICT OF COLUMBIA TO INTERVENE; COMPLAINT IN INTERVENTION; AND MEMORANDUM IN SUPPORT

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MOTION BY THE DISTRICT OF COLUMBIA TO INTERVENE

The District of Columbia moves to intervene in this original action as a matter of right or in the exercise of the Court's discretion. Sup. Ct. R. 9.2; F.R.Civ.P. 24(a), (b). A complaint in intervention accompanies this motion, as does a memorandum in support of the motion.

District law, as well as principles of law enunciated in *Texas v. New Jersey*, 379 U.S. 674 (1965), and *Pennsylvania v. New York*, 407 U.S. 206 (1972), entitle the District to a portion of the unclaimed funds whose ownership is being disputed by the parties to the present action, Delaware, New York, and Texas. The District's Disposition of Unclaimed Property Act. D.C. Law 3-160, *as amended*, D.C. Code §42-201 *et seq.* (1986 repl.), provides that intangible property (includ-

ing undistributed dividends, interest, and other proceeds arising from securities transactions) which is unclaimed by the owner more than seven years after the owner became entitled to it is presumed to be abandoned and must be delivered to the District. See §§103, 109, 119, 120, D.C. Code §§42-203, -209, -219, -220.

Unless the District is allowed to intervene, the property to which it is entitled may be awarded to one of the current parties or statutes of limitations may be interposed as defenses to the District's claims to the property. The District can therefore not rely on the current parties to protect its interests in the disputed property. The District's participation (and that of the other states that have moved to intervene) will avoid multiple suits between governmental claimants to the disputed property.

The District's intervention should not delay these proceedings or prejudice the ability of the present parties to protect their interests. The litigation is still in its infancy. Other than the complaints and answers, only one set of interrogatories has been served and answered.

Respectfully submitted.

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COMPLAINT IN INTERVENTION BY THE DISTRICT OF COLUMBIA

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1. JURISDICTION The original jurisdiction of this Court over the present parties rests on Article III, §2 of the Constitution, and 28 U.S.C. 1251.

2. THE PENDING ACTION.

a. On May 31, 1988, the Court granted the State of Delaware leave to bring this action against the State of New York to determine the rights of those states to unclaimed intangible property ("excess receipts"), consisting of dividends, interest, and other distributions arising out of security transactions, the ownership of which is unknown and which is held by securities brokers incorporated in Delaware, but which exceeds the amounts to which the brokers are entitled.

b. On December 12, 1988, the Court appointed a special master for the dispute.

c. On February 21, 1989, the Court granted the State of Texas's motion to file a complaint in intervention that broadened the property in dispute to include dividends, interest, and other distributions ("additional excess receipts"), held by Depository Trust Corporation or Cede & Co., which have not been claimed by brokerage- and bank-members of the Depository Trust Co.

d. Alabama, Arizona, Connecticut, Hawaii, Illinois, Idaho, Indiana, Kansas, Kentucky, Louisiana, Montana, Nevada, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, and Washington, have moved to intervene. Their motions are pending. Some of their complaints would expand the scope of the litigation to include excess receipts held by all brokerage firms, wherever incorporated.

3. THE DISTRICT OF COLUMBIA. The District of Columbia is a government and body corporate for municipal purposes, R.S.D.C. §2, 20 Stat. 102, ch. 180, §1, *as amended*, D.C. Code §1-102 (1987 repl.), to which Congress has given a large measure of self-government. See District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 820, *as amended*.

4. CLAIM BY THE DISTRICT OF COLUMBIA. Under the District of Columbia's Disposition of Unclaimed Property Act, D.C. Law 3-160, 27 D.C.R. 5150, *as amended*, D.C. Code §42-201 *et seq.* (1986 repl.), and under principles of law enunciated in *Texas v. New Jersey*, 379 U.S. 674 (1964), and *Pennsylvania v. New York*, 407 U.S. 206 (1972), the District of Columbia is entitled to claim an undetermined portion of excess receipts held by brokerage firms, wherever located, and of additional excess receipts for one or more of the following reasons:

a. the holders are incorporated in the District of Columbia;

b. the holders are domiciled in the District;

c. the issuers of the distributions creating the excess receipts and additional excess receipts are incorporated in the District of Columbia or are the District of Columbia or its governmental units;

d. the securities transactions giving rise to the creation of the excess receipts and additional excess receipts are attributable to commercial and financial activity within the District of Columbia and, on information and belief, it is possible to distribute those receipts in proportion to that activity.

5. WHEREFORE, the District of Columbia demands judgment

a. for that portion of the excess receipts and additional excess receipts to which the District of Columbia is entitled by its Disposition of Unclaimed Property Act and other applicable principles of law;

b. against the state of New York for excess receipts and additional excess receipts to which the District of Columbia has been entitled but which have previously been seized by the State of New York, plus interest at the prevailing rate; and

c. for such further relief as is just.

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MEMORANDUM IN SUPPORT OF MOTION BY THE DISTRICT OF COLUMBIA TO INTERVENE

This original action concerns intangible property generated by dividends, interest and principal payments, and other securities transactions, whose ownership is unknown and perhaps impossible to trace as a practical matter because of the billions of annual securities transactions involved. New York, Delaware, and Texas assert rights to the property based on conflicting theories.[1]

---

[1] In *Texas v. New Jersey*, 379 U.S. 674, 678, 680-681 (1965), the Court held that disputes between the states over escheatable property should be "determined primarily on principles of fairness" and ease of administration. Distribution "in proportion to the commercial activities of their

[Footnote continued on next page]

Under its Disposition of Unclaimed Property Act, D.C. Law 3-160, *as amended*, D.C. Code §42-201 *et seq.* (1986 repl.), patterned on the Uniform Unclaimed Property Act, the District of Columbia is entitled to undetermined portions of the unclaimed property under the theory espoused by Texas. In addition, under the theory espoused by Delaware, the District is entitled to the excess receipts held by brokerage houses incorporated in the District if the litigation is expanded to include intangible property held by brokerage houses incorporated outside Delaware. As the brief in support of the motion to intervene filed by Alabama and others points out, it would be an inefficient use of judicial resources to omit so many holders of excess receipts from litigation designed to adopt a single standard of entitlement.

The District of Columbia has a right to intervene in this action under F.R.Civ. P. 24(a)(2), as incorporated by Sup. Ct. R. 9.2, because the disposition of this action is likely, as a practical matter, to impair the District's ability to protect its interest in the disputed property. The Court has previously allowed governmental bodies with an interest in property subject to conflicting claims to intervene. In the present case, Texas was allowed to intervene; in *Pennsylvania v. New York*, 407 U.S. 206 (1972), Arizona, California, Connecticut, and Indiana, were allowed to intervene; in *Texas v. New Jersey*, 379 U.S. 674 (1965), Florida was allowed to intervene; see also *Maryland v. Louisiana*, 451 U.S. 725, 745-46 n. 21

[Footnote continued from previous page]

residents," could accomplish both purposes. *Id.* at 681; see also *Pennsylvania v. New York*, 407 U.S. 206, 210 (1972). New York's brief in opposition to Delaware's motion for leave to file a complaint suggests that formulae could be used to approximate entitlement, considering the expense involved in recreating billions of transactions. The New York Stock Exchange appears to keep statistics of stock ownership, brokerage firms, and broker representatives by state. See New York Stock Exchange, FACT BOOK 1988, 61-62, 68 (1988). Discovery may reveal other sources of readily accessible and relevant current statistics.

(1981) (allowing intervention by a state, because its allegations of injury were identical to those of the original plaintiff states, and by private pipeline companies because they had "a direct stake in this controversy" and were likely to provide "a full exposition of the issues"). The District's interest is not adequately represented by the existing parties because this is not a class action; the parties cannot be expected to protect the interest of the District when it diverges from their own; and the District's absence from this litigation may bar it from recovery of intangible property as to which a statute of limitations applies.[2]

Alternatively, the District should be permitted to intervene under F.R. Civ. P. 24(b) because the District's claims raise the same issues of law and fact already raised by the existing parties. The Court must analyze the securities distribution system in order to resolve the claims of the parties already before the Court and those applying to intervene. The District's participation will obviate multiple similar suits and will therefore expedite resolution of the controversy.

The District's motion is timely in light of all the circumstances, but especially considering how little has happened in the litigation thus far. See *National Association for the Advancement of Colored People v. New York*, 413 U.S. 345, (1973). Other than the filing of answers by New York and Delaware, the only substantive action taken by the present parties thus far has been a response to one set of interrogatories. No status conference or hearing has been held by the master. And motions to intervene by twenty states are pending before the Court.

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[2] The District believes, however, that a statute of limitations defense is likely to be unsuccessful. See *Texas v. New Jersey*, 379 U.S. 674, 682 (1965) (escheat by state of corporate domicile is subject to rights of other states arising after the escheat, as, for example, when the other states subsequently make provision for the escheat of such property in their own laws).

CONCLUSION

The District of Columbia's motion to intervene should be granted.

Respectfully submitted.

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DISTRICT OF COLUMBIA DISPOSITION OF UNCLAIMED PROPERTY ACT, D.C. LAW 3-160, *AS AMENDED, D.C. CODE* § 42-201 *ET SEQ.* (1986 REPL.)

(relevant provisions)

§ 42-201. Findings; purpose.

The District of Columbia currently lacks statutory authority to act as custodian for substantial sums of abandoned personal property within its jurisdiction. This chapter is intended to mandate the report and delivery by holders and to authorize the receipt for safekeeping and fiscal growth by the District of Columbia of any and all personal property which is abandoned, without regard either to any maximum length of time for which such property was abandoned or to any statute limiting the right to sue to claim such property.

§ 42-202. Definitions

As used in this chapter, the term:

(1) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held by the holder.

(2) "Attorney General" means the chief legal officer of a state.

(3) "Banking organization" means any bank, trust company, savings bank, or a private banker or such other individual or organization defined by the laws of the United States or of the District of Columbia as a bank or banking organization.

(4) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of 2 or more individuals, whether or not for profit, including a banking organization, financial organization, life insurance corporation, or utility.

(5) "District" means within the geographical boundaries of the District of Columbia.

(6) "Domicile" means, with respect to businesses: (A) The state of incorporation in the case of a corporation incorporated under the laws of a state; (B) the state of the principal place of business in the case of a person not incorporated under the laws of a state; or (C) the state of the principal place of business in the United States of America in the case of any other person. For purposes of this chapter, the term "state" includes the District of Columbia.

(7) "Employee benefit trust distribution" means any money, life insurance, endowment, or annuity policy or proceeds thereof, securities or other intangible property, and any tangible property that is distributable to a participant, former participant, or the beneficiary, estate, or heirs of a participant, former participant or beneficiary, from a trust or custodial fund established under a plan to provide health and welfare, pension, vacation, severance, retirement benefit, death benefit, stock purchase, profit sharing, employee savings, supplemental unemployment insurance benefits, or similar benefits.

(8) "Financial organization" means any savings and loan association, building and loan association, credit union, or investment company.

(9) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(10) "Holder" means any person wherever organized or domiciled:

(A) In possession of property belonging to another;

(B) Who is a trustee in case of a trust; or

(C) Who is indebted to another on an obligation.

(11) "Intangible personal property" means all choses or things in action.

(12) "Last known address" means a description of the location of the apparent owner for the purpose of the delivery and receipt of mail.

(13) "Life insurance corporation" means any association or corporation including any nonprofit relief association as defined by § 47-2611, transacting the business of insurance on the lives of persons or insurance appertaining thereto, including, without limitation, endowments and annuities.

(14) "Mayor" means the Mayor of the District of Columbia or the Mayor's authorized agent.

(15) "Owner" means a depositor in the case of a deposit; a beneficiary in the case of a trust; a creditor, claimant, or payee in the case of other choses in action; or any person having a legal or equitable interest in property subject to this chapter or his or her legal representative.

(16) "Person" means an individual, business association, government or governmental subdivision or agency, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(17) "Utility" means any person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

§ 42-203. Property presumed abandoned.

(a) All intangible personal property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 7 years after it became payable or distributable is presumed abandoned.

(b) Property presumed abandoned shall include, but is not limited to: Drafts, credit balances, credit checks, uncashed vendor checks, and any other outstanding checks.

(c) Property subject to this chapter shall be deemed payable or distributable notwithstanding the owner's failure to present any instrument or document evidencing the owner's right to receive the payment provided therein.

§ 42-204. Conditions precedent to presumption of abandonment.

Unless otherwise provided by statute of the District of Columbia, intangible personal property is subject to a presumption of abandonment under this chapter if the conditions leading to a presumption of abandonment as described in §§ 42-203 and 42-205 through 42-216 are satisfied, and:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in the District;

(2) An apparent owner cannot be established and at least 1 of the following apply:

(A) The last known address of the person entitled to the property is established as being within the District;

(B) The holder is domiciled in the District and has not previously paid or delivered the property to a state; or

(C) The holder is the District government and it has not previously paid or delivered the property to a state;

(3) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide an escheat or abandoned property law applicable to the property in question and the holder is:

(A) Domiciled in the District; or

(B) The District government;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is:

(A) Domiciled in the District; or

(B) The District government; or

(5) The transaction concerning the property took place in the District, and:

(A) (i) The owner of the property is unknown, or (ii) the last known address of the apparent owner as shown on the records of the holder is in a state that does not provide an escheat or abandoned property law applicable to the property; and

* * *

(B) The holder is domiciled in a state that does not provide an escheat or abandoned property law applicable to the property.

§ 42-209. Undistributed dividends and distributions of business associations.

Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within 7 years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in the District; or

(2) It is held or owing by a business association doing business in the District, but not organized under the laws of or created in the District, and the records of the business association indicate that the last known address of the person entitled thereto is in the District.

* * *

§ 42-217. Report of property presumed abandoned.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the Mayor with respect to the property as provided in this section.

(b) The report must be verfied and shall include:

(1) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and the beneficiary and his or her last known address according to the life insurance corporation's records;

(2) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under $50 shall be reported in the aggregate upon the aggregation exceeding $50;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property;

(5) Other information which the Mayor prescribes by rule as necessary for the administration of this chapter; and

(6) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any and if known, of each person appearing from the records of the holder to be the owner of any property of the value of $50 or more presumed abandoned under this chapter.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or the present holder has changed his or her name while holding the property, the present holder shall file with his or her report all known names and addresses of each previous holder of the property.

(d) The report as of the prior June 30th must be filed before November 1st of each year, but the report as of the prior December 1st of life insurance corporations must be filed before May 1st of each year. The Mayor may postpone the reporting date upon written request by any person required to file a report. In calendar year 1981, the report concerning all property presumed to be abandoned as of June 30, 1980 (and December 1, 1980, for insurance companies), must be filed no later than June 20, 1981.

(e) If the holder of property presumed abandoned under this chapter has in its records an address of the apparent owner, the holder shall, not more than 120 days prior to filing the report required by this section, send written notice to the owner at the last known address to prevent abandonment from being presumed. Within [*sic*] respect to the property required to be reported by June 20, 1981, pursuant to

subsection (d) of this section, the holder shall send the written notice between March 15, 1981, and June 20, 1981 (to prevent abandonment from being presumed) to the owner at the last known address.

(f) Verification, if made by a partnership, must be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

§ 42-218. Notice of abandoned property.

(a) Within 120 days from the filing of the report required by § 42-217, the Mayor shall cause notice to be published at least once each week for 2 consecutive weeks in a newspaper of general circulation in the District.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing To Be Owners of Abandoned Property" and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice as specified in this chapter;

(2) A statement that information concerning the amount or description of the properpty and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the Mayor; and

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction before April 1st, or in the case of life insurance companies October 1st, the abandoned property will be placed in the custody of the Mayor not later than May 1st, or in the case of life insurance corporations November 1st, and all further claims must thereafter be directed to the Mayor.

(c) The Mayor is not required to publish notice of any item of less than $50 in value unless the Mayor deems such publication to be in the public interest.

(d) Within 120 days from the receipt of the report required by § 42-217, the Mayor shall mail a notice to each person

having an address listed who appears to be entitled to property of a value of $50 or more presumed abandoned under this chapter.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the Mayor, property is being held to which the addressee appears entitled;

(2) The name and address of the person holding the property and any necessary information regarding the changes of name and address of the holder; and

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the Mayor and all further claims must be directed to the Mayor.

(f) This section is not applicable to sums payable on traveler's checks or money orders and similar written instruments that are presumed abandoned under § 42-205.

(g) With respect to the property reported on or before June 20, 1981, pursuant to § 42-217 (d), the Mayor shall cause the newspaper notice required by subsection (a) of this section and the mailing notice required by subsection (d) of this section to be completed no later than July 15, 1981. The newspaper notice shall contain all the information required by paragraphs (1) and (2) of subsection (b) of this section and a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction on or before August 30, 1981, all further claims must thereafter be directed to the Mayor.

§ 42-219. Payment or delivery of abandoned property.

(a) Except as otherwise provided in subsections (b) and (c) of this section, every person who has filed a report under § 42-217 shall, within 6 months after the final date for filing reports as required by § 42-217, pay or deliver to the Mayor all abandoned property specified in the report. With respect

to property reported by holders on or before June 20, 1981, pursuant to § 42-217 (d), the holders shall pay or deliver to the Mayor all abandoned property specified in the report no later than September 15, 1981.

(b) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property which will no longer be presumed abandoned to the Mayor, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(c) In the case of sums payable on traveler's checks, money orders, and similar written instruments presumed abandoned under § 42-205 or any other property reported pursuant to § 42-217 for which the holder has not reported the name of the apparent owner, the property shall be paid or delivered to the Mayor at the time of filing the report specified in § 42-217.

* * *

§ 42-226. Claim of state to recover property.

(a) At any time after property has been paid or delivered to the Mayor under this chapter, a state is entitled to recover the property if:

(1) The property was presumed abandoned in the District because the apparent owner was unknown when the property was presumed abandoned under this chapter, the last known address of the apparent owner was in fact in that state, and under the laws of that state, the property escheated to or was subject to a claim of abandonment by that state;

(2) The last known address of the apparent owner of the property appearing on the records of the holder is in that state and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in that state, and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state;

(4) The property was presumed abandoned to the District government under § 42-204 (5) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) The property is the sum payable on a traveler's check, money order, or other similar instrument that was presumed abandoned to the District under § 42-205, the traveler's check, money order, or other similar instrument was in fact purchased in that state, and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state.

(b) The claim of a state to recover escheated or abandoned property under this section must be presented in a form prescribed by the Mayor, who shall consider the claim within 30 days after it is presented. The Mayor shall allow the claim if the Mayor determines that the claiming state is entitled to the abandoned property.

(c) In connection with all property so delivered to a state, the Mayor shall seek indemnification from the state making the claim.

* * *

§ 42-234. Reciprocal actions and agreements.

(a) At the request of a state, the Corporation Counsel may bring an action in the name of the administrator of the requesting state, in any court of appropriate jurisdiction to enforce the unclaimed property laws of the requesting state against a holder in the District of property subject to escheat or a claim of abandonment by that state, if that state has agreed to pay expenses incurred by the Corporation Counsel in bringing the action.

(b) The Mayor may request that the attorney general of a state or any other person bring an action in the name of the Mayor in that state. The District government shall pay all expenses including attorney's fees in any action under this subsection. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner in accordance with this chapter.

(c) (1) The Mayor may enter into an agreement to provide and to receive information needed to enable the District government and a state to audit or otherwise determine unclaimed property that the District or the state may be entitled to escheat or subject to a claim of custody as abandoned property.

(2) The Mayor may by rule require the reporting of information needed to enable the Mayor to comply with agreements made pursuant to this section and prescribe the form, including verification of the information to be reported, and the times for filing the reports.

(d) The Mayor may join with states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

* * *

§ 42-241. Uniformity of application and construction.

This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states enacting it.